



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Georgia L. Falkenberg
Regulatory Services Coordinator
Amoco Corporation
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Dear Ms. Falkenberg,

This letter is in response to your January 6, 1998 correspondence in which you asked a number of questions about employee threshold determinations under section 313 of the Emergency Planning and Community Right-to-Know (EPCRA) program.

The first set of questions you present concern calculating employee threshold determinations when truck drivers are employed by the facility. EPA believes the following determinations of employee thresholds are accurate.

Amoco company driver / Amoco truck - yes, apply toward threshold
Amoco contracted driver / Amoco truck - yes, apply toward threshold (assuming driver is based on-site)
Amoco company driver / non-Amoco truck - yes, apply toward threshold
Amoco contracted driver / non-Amoco truck - no, do not apply toward threshold (assuming driver is based off-site)
Customer contracted driver / non-Amoco truck - no, do not apply toward threshold

Employee threshold determinations should include employees that directly support the activities of the facility including employees that work off-site. EPA states in the Emergency Planning and Community Right-to-Know Act Section 313 Guidance for Petroleum Bulk Terminals (EPA 745-B-97-014, October 1997), page 2-4, that "[e]mployees that perform activities which routinely occur off-site such as truck drivers, but who are based at the facility are also counted towards the employee threshold." Contract drivers, however, are not considered in this determination. Within the same paragraph, EPA also states that "[r]outine activities performed at the facility by outside personnel such as contract truck drivers that are not based at the facility are not counted towards the employee threshold." EPA considers contract truck drivers as drivers who are based off-site and are hired through contractual mechanisms to perform work in support of the facility. In these cases, if contract truck drivers are not based at the facility, the

facility is not required to count these hours. If drivers are employed by the facility and based on-site, all time spent working in support of that facility would be counted toward the employee threshold.

Also, EPA believes that hours worked by truck jobbers, which are not the same as contract truck drivers, should not be applied towards the employee threshold. EPA understands that truck jobbers take possession of the product upon pick-up on-site for transportation to the customer/purchaser. In the Emergency Planning and Community Right-To-Know Act Section 313 Addendum to the Guidance Documents For the Newly Added Industries (EPA 745-B-98-001, February 1998) EPA states:

Q23. A petroleum bulk terminal contracts with truck jobbers who purchase its petroleum products. The terminal has no direct control over the activities of the truck drivers. Are the hours worked by these jobbers and their drivers at the petroleum terminal counted towards the terminal's employee threshold calculation?

A23. No. The hours worked by the truck jobbers do not directly support the terminal. The jobbers purchase the petroleum products and function as customers to the terminal. The terminal has processed the petroleum product at the point that the jobbers take possession of the petroleum products.

The next set of questions you present concern employee threshold determinations when facilities employ a variety of contractors, on and off-site, for work in support of the facility. The specific situations and determinations you present are as follows:

- * Minor on-site intermittent service vendors (trash haulers, vending machines, service repairmen on utility-owned equipment, etc.) - Not "employee"
- * Major contractors (tank building/wrecking, tank painting, etc.) - "Employee"
- * Maintenance contractors (general structural building maintenance, lawn care services, janitorial, etc.) - "Employee"
- * Maintenance contractors (process equipment) - "Employee"
- * Off-site intermittent service vendors (truck maintenance, equipment repair, etc.) - Not "employee" (assuming services performed off-site)

Your understanding of how employee time should be considered for these situations requires some clarifications and corrections. Hours worked by on-site intermittent service vendors such as trash haulers, vending machine servicers, and service repairmen on utility owned equipment would not be considered toward the employee threshold. However, maintenance contractors such as general structural building maintenance and lawn care, may be counted toward the employee threshold determination if they are based at the facility and work in support of the facility. Factors considered in the identification of a contract employee include, the hiring party's right to control the manner and means by which the product is accomplished, the skill required, and, the source of the instrumentalities and tools. As stated in question and answer number 24 of the 1997 EPCRA Section 313 Questions and Answers document (EPA 745-B-97-

008, November 1997), EPA generally considers a contract employee as "a person working on or off-site for the facility under a specific contractual agreement performing specific tasks or services for the facility, except intermittent trash pick-up."

Concerning contractors of process equipment (e.g., tank building, etc.), EPA has clearly stated how these categories of service personnel should be considered. In the Guidance for Petroleum Bulk Terminals, page 2-4, EPA states:

"Facilities may have contract workers present at times to conduct maintenance and service operations, including equipment, motor vehicles, and building maintenance, construction, and operating processes and waste management activities (e.g., remediation). The hours of all these contract workers count toward the employee threshold for reporting under Section 313."

Given this guidance, EPA would consider the hours worked by contractors in the situations you have described toward the employee threshold. Hours worked by off-site intermittent service vendors such as truck maintenance and equipment repair persons, would not be applied toward the employee threshold assuming that services are performed off-site. The hours worked by these employees, while they may be providing a service to the "covered" facility actually support the off-site facility and are not counted by the "covered" facility.

Your last set of questions has to do with other employees who are working in support of the facility or as sales staff for the facility. Specifically, you ask if EPA agrees with the following determinations.

*** Direct support staff**

Office at terminal (operators, managers, secretaries, etc.) - "Employee"

Office elsewhere (marketing environmental coordinators; remediation coordinators; distribution engineers; distribution analysts; regulatory, compliance, data management staff) - "Employee" if actual time worked on behalf of facility is tracked

*** Sales staff**

Amoco prefers counting only employees who are officed on-site toward the employee threshold.

EPA agrees with some of this assessment. The below questions and answers from the Emergency Planning and Community Right-To-Know Act Section 313 Addendum to the Guidance Documents For the Newly Added Industries provide additional guidance on these points, in addition to what has already been given. The first question and answer addresses the issue of 'splitting' time worked by employees between an EPCRA section 313 covered facility which is part of a corporate entity and the amount of time of the employee that should be counted at the corporate office. EPA has determined that a corporate employee's hours spent supporting a covered facility should be counted toward the "covered" facility's threshold provided that time keeping records adequately track these hours. The second listed question and answer herein, relates to the coverage of all employees who work in support of a covered facility.

Q24. A covered facility that is part of a larger corporate entity has corporate employees located on-site. These employees do not directly support the activities that are conducted at the facility where they are located; rather, their time is spent working for other facilities that are part of the same corporate entity. Does the facility where these employees are located have to count the hours worked by these employees toward its employee threshold?

A24. Yes. The facility where these employees are located should count the hours worked by them toward its employee threshold, unless the facility's time keeping system allows it to track the time worked by these employees according to the actual facility for which they were working. If a facility can demonstrate through time keeping records that the time worked by these employees was in support of another facility within the same corporate entity, it does not have to count the hours worked by these employees towards its employee threshold. The facility which these employees directly support would have to count the hours toward its employee threshold.

Q25. An electricity generating facility has maintenance staff for maintaining the electricity distribution system. Staff are based on site. When counting the hours of this staff, the electricity generating facility is over the 20,000 hours or 10 FTE threshold. Without counting the management staff hours, the electricity generating facility falls below the 20,000 hours or 10 FTE threshold. Because these hours are not directly in support of the electricity generating portion of the facility (i.e., they are in support of the distribution system), do they count toward the 20,000 hours or 10 FTE threshold?

A25. Yes. Hours worked by employees who support the distribution system must be included in the facility's employee determination. All of the hours worked by all employees based at a "covered" facility whose function it is to support the "covered" facility would be considered toward the facility's employee threshold, regardless of whether the activities they perform are associated with covered activities or not (see also Q18 of the EPCRA section 313 Questions and Answers Document: Revised 1997 version).

Your second point on this issue has to do with sales staff. You ask how to count sales staff who work on-site and off-site. You indicate that employee hours are only considered when they are officed on-site. However, EPA has stated in guidance that all sales staff, regardless of where they are based, should be counted if they directly support the covered facility. The following question and answer from the Emergency Planning and Community Right-To-Know Act Section 313 Addendum to the Guidance Documents For the Newly Added Industries illustrates EPA's determination on this point.

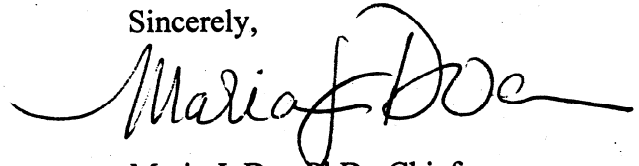
Q21. Does Facility A need to include in its employee threshold (10 FTE/20,000 hours) determination sales representatives that work for Facility A but are never/rarely physically

working at Facility A?

A21. Yes. For purposes of determining the EPCRA section 313 employee threshold, employee hours should be included in the employee calculation for the facility which the employees directly support. Therefore, if the hours spent by sales staff directly support a facility, then their hours should be allocated to the facility they directly support, regardless of the amount of time that the employee is physically at the facility.

I hope this information is helpful to you in making your EPCRA section 313 reporting and compliance determinations involving the employee threshold. Please let me know at 202.260.9592, if you have any other questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Maria J. Doa". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Maria J. Doa PhD., Chief
Toxics Release Inventory Branch

cc: IG system
Tim Crawford